



LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

Attorney General Reno calls for competent counsel: a good lawyer is the best defense against wrongful conviction

On June 29, 2000 at the Second NATIONAL SYMPOSIUM ON INDIGENT DEFENSE in Washington D.C., ATTORNEY GENERAL JANET RENO made the following remarks to the over 600 assembled public defenders, judges, prosecutors and legislators.

Thank you for what you do for the cause of justice all across this country in the 50 States. Last year's inaugural National Symposium on Indigent Defense has been characterized as a milestone. The Department of Justice brought together nearly 300 people from all spheres of the criminal justice system and from all levels of Government to focus on making indigent defense services stronger and more effective. We think it was a success. I hope so, but I know from my point of view that it was a great step forward and I want to thank the outstanding efforts of Mary Lou Leary, Nancy Gist, so many other people in the Department of Justice who made this possible.

This year's meeting is taking place at a critical, perfect time for such a meeting to occur. In recent months the American people have begun a national conversation about innocent people who are wrongfully convicted, and about the importance of competent counsel in the criminal justice system.

Columbia's Law School's study recently reported that nearly 40 percent of death penalty convictions overturned on appeal during the period of 1973 to 1975 were overturned for reasons attributed to ineffective assistance of counsel.

We must be careful about generalizing from a small subset of the more than 10 million cases processed annually by our criminal justice system, but these cases reinforce a central truth: our system will work only if we provide every defendant with competent counsel. In our system, all defen-

dants are presumed innocent until proven guilty, and all defendants are entitled by our Constitution to a lawyer who will provide effective assistance.

I think this represents the larger problem of how we make the law real to all Americans, how we make it something more than just the paper it's written on, and I think access to justice and access to the law is one of the most critical issues we face in America today.

A competent lawyer will skillfully cross-examine a witness and identify and disclose a lie or a mistake. A competent lawyer will pursue weaknesses in the prosecutor's case, both to test the basis for the prosecution and to challenge the prosecutor's ability to meet the standard of proof beyond a reasonable doubt.

A competent lawyer will force a prosecutor to take a hard, hard look at the gaps in the evidence. I am fond of saying in the first month that I served as a prosecutor, one of Miami's noted defense lawyers came to me with colored charts and

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other paraphernalia before we had charged and said, "Now, this is what I think you can prove, but these are the gaps." And, it was one of the best examples I have ever seen of representation, because he took me through it step by step, exposed the gaps, cross-examined me, if you will, and his defendant, or his client was not charged.

A competent lawyer will know how to conduct the necessary investigation so that an innocent defendant is not convicted, and I would add another thought. A competent lawyer, if he or she possibly can, will help their client address the problems that caused the crime in the first place and help them solve the problems so that it does not occur again.

A competent lawyer will help his client explain themselves to him, and he will help explain the client to others. He will build bridges, and fill gaps in the client's life as well, but it is the digging characteristic of a competent lawyer that is so important to me.

One of the things I missed most, and I relish the opportunity when I can get into it either arguing a 10-minute piece of a case in the Supreme Court or digging on an issue, is just the opportunity to dig and dig and dig and get to the truth, and so the competent lawyer needs more than just his or her competence. They need the investigative tools to go with it, because the search for the truth is often illusory if you have neither the time nor the tools to supplement your competence.

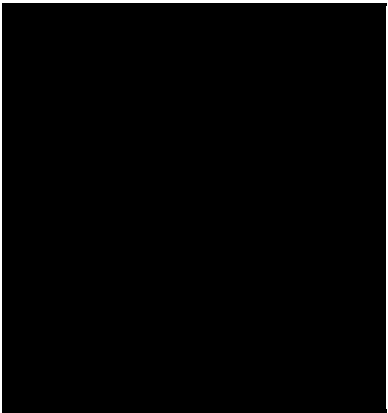
Although there has been much discussion of late about the remarkable forensic capability of DNA identification and its capacity to exonerate the wrongfully convicted, there is a relatively narrow universe of cases in which DNA evidence is both available and material.

In the end, a good lawyer is the best defense against wrongful conviction, and, I would add, a good prosecutor might equal them by not charging the person in the first place, and the good defense lawyer who fills in the gaps or points out the gaps can aid and abet that effort. In short, we should all have one common goal, that justice be done, justice be done according to the Constitution, and if we have competence and resources and tools and time in balance we ought to do so much more in achieving that goal.

In this room today and around the country, there are many remarkable lawyers who represent indigent defendants. You deserve this Nation's respect and our highest praise, because day-in and day-out you all do your best, with very few pats on the back. The cause you serve, helping poor people charged with crime, has never been popular, yet poor defendants make up about three-quarters of all felony defendants, and many of the lawyers who represent these clients face overwhelming obstacles in their efforts to provide quality

representation.

I think to address these issues we must look at several key issues. First, we must recognize the critical role of indigent defense services in the criminal justice system. Too often, there has been a tendency to see defenders as standing separate from the criminal justice system when, in fact, all components of the system are tightly interwoven. Defects in one part of the system have a measurable impact on the rest. When we create a new drug court in a community, it's not going to work unless there is strong indigent defense representation at the table. When we set up a re-entry program for offenders coming back



Attorney General Janet Reno

from prison, we must include the indigent defense representative at the table, or the program won't work. When we do state-wide or county-wide planning on criminal justice, we have to ensure that we provide the same level of support and oversight for indigent defense services that we provide for other agencies and functions, or our criminal justice system will not be a system and it won't work.

Second, we must strive to implement helpful standards for indigent defense, standards that cover, among other things, skills and experience and appropriate workloads for indigent defense offices. The Department of Justice has compiled a soon-to-be-released seven-volume compendium of standards. I hope that these volumes will enable state and local governments to compare standards from other jurisdictions and come up with their own, and we should explore ways to create incentives for counties and agencies to meet standards for competent indigent defense.

Indiana, for example, now reimburses counties for a fixed portion of their indigent defense costs when those counties comply with certain minimum standards designed to improve the quality of indigent defense. We should follow that example.

Third, we must devote sufficient resources to indigent defense. I have supported in the past, and

will continue to support efforts to have Congress appropriate funds to pay court-appointed public defenders at least \$75 an hour in Federal cases. I hope that State and county governments will look at their compensation levels for indigent defense lawyers and ensure both that they are sufficient to attract counsel with a high level of skills and experience, and sufficient to hire enough lawyers, investigators, and administrative staff to handle the overflowing caseloads.

Now, at the same time that we work to secure these resources, we must make sure that we put in place cost-containment measures to keep defense costs from becoming excessive, otherwise there will be some irate prosecutor like me who said, Bennett, what are you doing this for? Why can't we do it this way better?

Fourth, we must insist that the indigent defense community, in acquiring essential training and technical assistance, be provided with what is necessary to do the job. Every time I turn around, whether it be in policing, in prosecuting, in judging, in providing defense, training can make such a difference, training from people who have been through it, who understand what to look for, how to do it, how to prepare, how to dig and dig some more, and some more.

Understanding the latest technology used in crime analysis no longer is a luxury for an attorney who is defending or prosecuting a criminal case, and public defenders need access to training resources to the same degree that Federal, State, and local prosecutors have the same.

Fifth, we have to gain a better understanding of just how well or how poorly indigent defense systems in this country are faring. The last comprehensive national survey of indigent defense systems was released 20 years ago, although a new survey is now in progress with funding from the Department's Bureau of Justice Assistance. When the new survey is complete, we must study it carefully so that we can focus our attention on those systems with the greatest need.

Finally, although we may be adversaries, the criminal justice system must work in collaboration. I see wonderful evidence in this room of the collaborative spirit that can make the system work. Public defenders have traveled here from their home districts and brought with them judges, prosecutors, police, corrections experts, legislators, county budget officials, bar leaders, and academics. You are all, by the fact that you're here, problem-solvers who have come here to really listen to each other and then return home better able to work together in improving the justice system.

I applaud all those who are not defenders who are here today, who have made themselves available to participate in this symposium. I think your attendance is particularly important, because it is a testament to your commitment to fairness in our justice system.

At the Department of Justice we have tried to make collaboration the foundation for our work in indigent defense. We have used the model of collaboration to pursue exciting projects like our funding of the national defender leadership project run by the Vera Institute, which helps public defenders in management roles build coalitions, marshal resources, and garner support for their organizations.

We have also joined forces with the American Bar Association in funding the Juvenile Defender Training and Technical Assistance Center, which now serves as a long-overdue support system for the juvenile defense bar. This will give the members of that bar a forum for networking, creating partnerships, exchanging information, and participating in the national debate over juvenile crime, and I am looking forward to participating in the first official meeting later this year of the American Council of Chief Defenders, which will be a strong coalition of defenders to address common concerns in the criminal justice area.

When people work together to develop a juvenile diversion program, for example, prosecutors and defenders do not compromise their adversarial roles, but they are able to achieve a result that is good for defendants and good for society if both work together according to their respective roles.

The same dynamic operates when law enforcement prevention and treatment specialists put their heads together and come up with a plan to reduce drug abuse in a specific community. The idea is to form a two-way street so that ideas and assistance can flow in both directions in order to further a larger goal, a fair and responsive criminal justice system.

The challenges that we face on indigent defense across the country are great. We cannot expect the defender community to make these improvements on its own. We need the voices of judges, prosecutors, legislators and others. We need to reach out to the business community and let them understand the mathematics of doing it in a way that's spread too thin, or doing it the right way, and letting them know that if they don't appreciate anything else, the return on their dollar is going to be much more effective if it's done the right way.

We must all enhance and publicize the role of an indigent defender as someone who gives practical meaning to that wonderful document, the Constitution, and as someone who is essential in achieving justice. We must explain to lawmakers and the public how the failure to fully fund the indigent

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defense system in the long run imposes more cost in more ways than one, both on the defendant, but on the community as a whole.

We must all explain that when public defenders are overworked and underpaid, staff turnover will be high, cases will have to be relearned, and more frequent recruitment and training costs will be incurred. There will be more continuances, and more continuances, and we must all explain that if a criminal case goes to trial with a lawyer who lacks competence, and a conviction is subject to reversal by an appellate court, and we have to start the whole cumbersome process all over again, it is going to cost a lot more. The prosecutor, the judge, the victim, the police officers and other witnesses will have to go through a second trial. The human costs are too great to ignore.

We have all been working on and talking about this issue for a long time, but things are different. People are beginning to listen. Now is our chance, working together, to make real progress. Let's seize the opportunity and press for the improvements that are needed.

The administration of justice is among the most important tasks in any society. In these 7-1/2 years I have had ministers of justice, attorneys general, prosecutors, and even Prime Ministers come to the conference room of the Attorney General's Office from emerging democracies around the world. At first they come with stars in their eyes, with great hope, and with real spirit, because it is such an exciting challenge.

Then they come back, sadder, wiser, more frustrated, and then sometimes they fail, and one of the things that I have been reminded of is how fragile, how frail the institution of democracy is, but I have also been reminded that it comes close to being a miracle, a miracle that people can use that Constitution over 200 years again and again to protect our citizens against tyranny, and to use it as it evolves with technology that our Founding Fathers never dreamed could exist.


But it is something that we cannot take for granted, and it is something that requires constant vigilance, and it is something that requires the rule of law to assist it in protecting individual rights. Your role is so vital in that. We must do it fairly, and I would ask all of you to address in the months ahead what I think is also one of the great problems we face in America. How do we make sure that young people who don't get a good start in life, how can we make sure that at every step along the way the criminal justice system takes steps to correct that problem so that they don't get into trouble, or they don't get into trouble again?

We can stand at the end of the line and watch disparity in

filings, disparity in punishment, but where we should also be focusing our efforts is in up-front efforts to keep people out of trouble, to keep people out of detention, to keep people out of secure detention and in home detention, to keep people in the juvenile justice system, to keep people out of long-term minimum mandatory sentences, to keep people away from the death penalty, and that is going to require an effort on the part of us all to achieve if we can.

But I think we can, because we have a sense of collaboration, a spirit that can bring us together to focus on young people who are about to get in trouble, or who have been in trouble, and through project reentry's, through work with others, we ought to give to young people a chance, a true chance to get off on the right foot after the system has worked fairly.

There are so many things to do, but I look forward to working with you in every way that I can in the time I have remaining in this job, however long that may be before January, and then after that. And then after that, after my trip in my red truck, I look forward to working with you all in every way that I can to see that we build in America true access to justice for every single American. Thank you for all you have done to try to achieve that goal. ♦

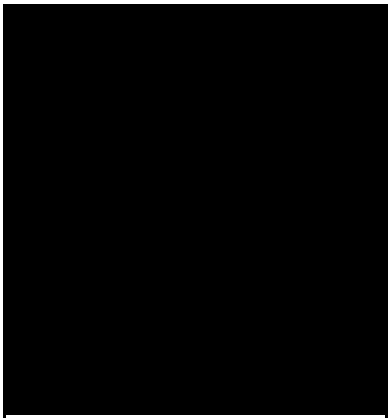


"We all of us need assistance. Those who sustain others themselves want to be sustained."

-Maurice Hulst, *The Way of the Heart*



Chief Justice Joseph E. Lambert Named Kentucky's Outstanding Judge by Kentucky Bar Association



Chief Justice Joseph E. Lambert was honored with the Outstanding Judge Award by the Kentucky Bar Association. The ceremony took place in Covington on June 15, 2000 at the KBA Annual Membership Awards Luncheon, held in conjunction with the KBA Annual Convention.

Lambert is recognized for his dedication to the practice of law and his visionary innovations to the Commonwealth's system of justice. Since becoming Chief Justice in October 1998, Lambert has instituted many beneficial changes to the law and the legal system:

Chief Justice Joseph E. Lambert

He has achieved passage in the 2000 General Assembly of the Senior Status Judges Program, allowing the state's senior members of the bench to retire and continue to serve part-time where needed. This program, similar to the federal system, will be the most fundamental change in the operation of the judicial system since passage of the Judicial Article to the Kentucky Constitution in 1976.

He has led the implementation of six new family courts across Kentucky, as well as the continued expansion of the family courts.

Lambert has provided for the first substantial expansion of Kentucky's drug court program to diverse areas across the state (the drug court concept allows the judge to "sentence" a non-violent drug offender to a probationary status of rigorous treatment and testing, and requires the completion of education or vocational training, gainful employment, and payment of child support and other financial obligations).

He has made the improvement of public trust and confidence in the justice system a primary goal of his administration.

For these reasons, and many others, Lambert was recognized as the Kentucky Bar Association's Outstanding Judge for 2000.

Chief Justice Lambert has been a strong supporter of indigent defense in Kentucky. He was a member of the Blue Ribbon Group which issued a report in June of 1999 supportive of significant new resources for indigent defense. "Justice Lambert is an advocate of a system that works, and recognizes that any criminal justice system needs strong courts, strong prosecutors, and strong defenders in order to operate efficiently and do justice," said Ernie Lewis, Public Advocate.

The Department of Public Advocacy applauds the work of Chief Justice Lambert, and congratulates him on this award as Kentucky's Outstanding Judge for 2000. ♦

KBA President Jerry D. Truitt on Defenders Role in the Justice Process

A critical purpose of the Kentucky Bar Association is to insure a continuing high standard of professional competence on the part of the members of our Kentucky Bar. In meeting this mission, it is imperative that the Kentucky Bar helps insure that the over 100,000 citizens of Kentucky, who are charged with and convicted of a crime each year, who are too poor to employ their own attorney, receive high quality representation by Kentucky's public defenders.

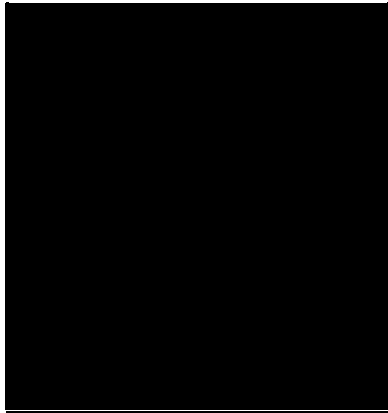
Kentucky citizens must receive quality legal representation to insure that the process is fair and the result one we, as a Commonwealth, can rely on as being just. Each time a public defender represents a client well, the mission of our Bar Association is advanced in a noble way and confidence in our criminal justice process is increased.

On behalf of the KBA, I applaud the statesmen and women who, as the Kentucky Blue Ribbon Group on Improving Indigent Defense for the 21st Century, urged our Governor to fund our public defenders adequately. I commend the Governor for making defender funding a priority, and I commend the 2000 General Assembly for enacting that budget into law.

We are most fortunate to have Ernie Lewis, the KBA Lawyer of the Year, leading Kentucky's statewide defender program that is now gaining the resources necessary to meet its mission of quality legal representation across the state.

We in Kentucky are more secure in our knowledge that justice is being done daily in the courts of Kentucky as a result of the additional funding and the leadership of Public Advocate Lewis. ♦

Jerry D. Truitt
President, Kentucky Bar Association



Jerry D. Truitt

28th Annual Public Defender Education Conference

Welcoming Remarks by the Hon. Richard L. Murgatroyd

The following are remarks made by Judge Executive Dick Murgatroyd to open this year's Annual Public Defender Conference in Ft. Mitchell, Ky.

Good Afternoon,

It is my personal privilege and professional honor to join you this afternoon to take part in the opening session of the 28th Annual Public Defender Education Conference.

On behalf of the Kenton County Fiscal Court, and myself, I want to welcome you to our community and thank you for selecting our community as the site for this year's event.

We, in Kentucky, are truly fortunate to have a system of public advocacy whereby we can insure that every citizen, regardless of their station in life, receive due process and enjoy the protection of their civil liberties as guaranteed in the constitution.

It is certainly not popular in our society to defend an individual charged with murder, rape, or robbery. And, it is unfortunate that among the loudest voices against public advocacy and the protection of individual civil liberties you will find those literally willing to die to defend their right to bear arms.

Regardless of whether your client is ultimately guilty of the crime with which he or she is charged, you have a duty and a responsibility to insure that their civil liberties are protected and you continue to do that quite well.

You have a tough job, no doubt about it; I can only tell you that there are many of us who deeply appreciate the work that you do.

While we have a system that has a tradition rich in history in their advocacy of those in need, it is, in my view, a sad commentary when more than 100,000 Kentuckians are in need of public defender services.

But, the reality is, for many that live in depressed or low income areas, lawlessness and self-preservation have become synonymous.

While we can and must continue to address the issue of public advocacy in a positive manner, the responsibility

of government does not stop there.

It is our responsibility, yours, mine, and all who serve in positions of public trust to work together to reform our welfare system.

It is time that in the greatest nation on earth we seek to eliminate the philosophy that if you are poor you should live in a six or eight block area in a community riddled with crime, violence, drugs and less adequate education, while the rest of society pretends there are none among us in need of help.

We must continue to wage the war on crime in Kentucky, but at the same time we must work to relocate those who are willing to move from those neighborhoods, not giving them a handout but a hand up.

We must address welfare reform through education at all levels to insure that as a basic foundation, every Kentuckian has the ability to read and write.

And, most important of all, we must insure that lady justice is blind to race and ethnicity in our society.

If all of us in this room will commit ourselves to the development of a system of public assistance where we give people the tools to build a better quality of life, and the encouragement to use those tools, together, we can restore pride to every corner of our Commonwealth and win the war against crime in our streets, without shedding the blood of another generation.

Thank you and enjoy the conference. ♦

Richard L. Murgatroyd
Kenton County Judge-Executive
County Building
Covington, KY 41011
(859) 491-2800

Honorable Richard L. Murgatroyd

Awards Ceremony Dinner

by Secretary Ron McCloud

Welcome to the 28th Annual Public Defender Education Awards Ceremony. I'm Ron McCloud, Secretary of the Public Protection and Regulation Cabinet and it's a real pleasure to be with you this evening.

Two very popular sayings are "good things come to those who wait" and "seek and ye shall find." Nobody knows these truths better than Department of Public Advocacy employees.

Thanks to the hard work of your public defender, Ernie Lewis; the support of Governor Paul Patton; and the approval of the legislature – DPA has had a banner year.

Being an old football player, I look at Ernie as our quarterback. He gathered the folks involved in the criminal justice system and had them appointed to the Blue Ribbon Group. This group acted as our scouts, by comparing Kentucky DPA's pay scale and caseloads to public defenders around the country.

They handed their findings off to Ernie, who formulated a convincing case, and then presented his playbook to the Governor and legislature for approval. And when his \$10 million budget was approved, Ernie and DPA had won the Super Bowl.

For all of his hard work, Ernie has also captured the Most Valuable Player award from the Kentucky Bar Association. He'll be named the KBA "Lawyer of the Year" in a few days at their annual meeting

Back to DPA. The increased funding will give you additional offices and a competitive pay scale. It will also give Kentucky citizens better representation by our public defenders.

When Baptist Preacher Francis Bellamy wrote the original pledge of allegiance for his school, which was later adopted as our nation's tribute to the American flag, his words became the cornerstone for democracy and a free society.

His concluding remark - "liberty and justice for all"- is the foundation upon which DPA is built. I salute every one of you in the Department of Public Advocacy for keeping these principles alive as you defend our Commonwealth's indigent and most vulnerable population.

DPA has truly been blessed, and I know you all appreciate the exciting changes this funding will bring. I'm a firm believer that when we receive a blessing, we need to look for ways to pass our good fortune on to others. I'd like to suggest that you share your blessing with the KECC. All too often, you see firsthand the desperate circumstances

that plague your clients. But while you're preparing cases and interviewing witnesses, the KECC is helping too. Whether it's research for childhood illnesses, or counseling for rape victims, or preparing food baskets for hungry families, the KECC works hand in hand with you to make life better for those who don't have any other place to turn.

I've been asked by Governor Patton to lead this year's state KECC campaign, and our goal is \$1.4 million. DPA increased their KECC giving by last year and the largest single donation for the entire Cabinet came from DPA.

Yet there were many that chose not to participate. I urge you to consider giving this year, and if you've been a contributor to KECC in the past, think about increasing your donation. If all 44,429 state employees contributed \$2 from every paycheck, we would generate over \$2 million for the KECC – a small sacrifice for you, but what a great difference your commitment will make.

The theme of this year's KECC campaign is "TEAMWORK 2000." Teamwork certainly helped get the DPA increased funding, so I'm hoping I can count on my DPA team when the KECC campaign begins in the fall.

Before I hand the microphone to Ernie Lewis, I'd like to read a special award that has been issued by Governor Patton who couldn't be here today. ♦



Ron McCloud

Ron McCloud
Secretary
Public Protection & Regulation
90 Airport Rd
Frankfort, KY 40601
Tel: (502) 564-7760 Fax: (502) 564-7760
email: ronald.mccloud@mail.state.ky.us

IN THE NAME AND BY THE AUTHORITY OF THE
COMMONWEALTH OF KENTUCKY

Paul E. Patton
Governor of the Commonwealth of Kentucky

WHEREAS, Ernie Lewis was appointed Public Advocate for the Commonwealth of Kentucky on October 1, 1996, following nineteen years of service as a public defender for the Department of Public Advocacy; and

WHEREAS, He has been with the Department of Public Advocacy since 1977, serving as an appellate lawyer, head of the Department's trial services efforts, and director of its Richmond Trial Office; and

WHEREAS, He has significantly changed the makeup of the DPA since is appointment as Public Advocate; and

WHEREAS, With his encouragement, the 1998 Kentucky General Assembly allocated an additional \$2.2 million for each year of the biennium which allowed the formation of five additional offices in the state; and

WHEREAS, In 2000, The Kentucky General Assembly allocated \$10 million to add Public Defender offices through out the state, increasing the salaries of these offices, and allowing better representation for the citizens of Kentucky; and

WHEREAS, He is known nationally for his commitment as an educator and a mentor of public defenders; and

WHEREAS, In the spring of 1999, he formed the *Blue-Ribbon Group on Indigent Defense for the 21st Century*; and

WHEREAS, The Kentucky Bar Association named Ernie Lewis Kentucky Lawyer of the Year and he is to be honored on June 15, 2000 at the KBA's Annual Conference;

NOW, THEREFORE, I, PAUL E. PATTON, Governor of the Commonwealth of Kentucky, do hereby pay tribute to

ERNIE LEWIS



for his outstanding service to the legal profession and the people of Kentucky.

Members of the Blue Ribbon Group

Co-Chairs:

Michael D. Bowling, Esq.
Wilson, Stanley, Bowling & Constanzo

Robert F. Stephens, Secretary
Kentucky Justice Cabinet

Members:

Kim Allen, Executive Director
Kentucky Criminal Justice Cabinet

Scotty Baesler, Esq.
Wyatt Tarrant & Combs

Robert W. Carran, Esq.
Taliaferro, Mehling, Shirooni & Carran

Richard H.C. Clay, Past President
Kentucky Bar Association

Denise M. Clayton, Judge
Jefferson County (Kentucky) District Court

Richard F. Dawahare, Esq.
Attorney-at-Law, Lexington

Laura M. Douglas, VP/General Counsel
Louisville Water Company

Robert C. Ewald, Esq.
Wyatt Tarrant & Combs, Louisville

Jeffrey H. Hoover, Representative
Kentucky General Assembly

Joseph E. Lambert, Chief Justice
Kentucky Supreme Court

Robert G. Lawson, Professor
University of Kentucky School of Law

James M. Lovell, Esq.
Attorney-at-Law, Paris

Ronald B. McCloud, Secretary
Kentucky Public Protection & Regulation Cabinet

Harry Moberly, Jr., Representative
Kentucky General Assembly

Phillip R. Patton, Commonwealth Attorney
Barren County, Kentucky

John M. Rosenberg, Director
Appalachian Research and Defense Fund, Inc.

Larry Saunders, Senator
Kentucky General Assembly

Kathy W. Stein, Representative
Kentucky General Assembly

Donald L. Stepner, Past President
Kentucky Bar Association

David L. Williams, Senator & Senate President
Kentucky General Assembly

Defender Salaries Increased; Prosecutors Earn More; Public Supports Salary Parity

by Ed Monahan, Deputy Public Advocate

DPA has worked with the Governor's Office of Policy & Management (GOPM) and the Personnel Cabinet to determine how much

For decades Kentucky has paid some of the poorest salaries among the 50 states to their public defenders. The reason is that over the years Kentucky's defender system has been one of the lowest funded defender programs in the nation utilizing the two recognized benchmarks: funding-per-case, and funding-per-capita. Funding for the Kentucky defender program and salaries for its defenders are changing through the leadership of Kentucky's Governor, General Assembly, Public Protection and Regulation Cabinet, Personnel Cabinet, and the *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* (BRG).

THE BLUE RIBBON GROUP ENDORSES HIGHER SALARIES The *Blue Ribbon Group* looked at what defenders were paid in other states. In 1999, the average entry level salary for public defenders in the 23 states studied by the BRG's consultant, The Spangenberg Group, was \$32,396. In 42% of the comparison jurisdictions, public defenders with five years of experience average over \$50,000 per year. In 50% of the jurisdictions, they earn over \$60,000. In only one state, Kansas, do they earn less than the \$38,012 paid in Kentucky. In view of these clear facts, the BRG made the following Finding and Recommendation on salaries:

Finding No. 6: The Department of Public Advocacy Ranks At, or Near, the Bottom of Public Defender Salaries Nationwide for Attorneys at All Experience Levels

Recommendation No. 4: Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.

Defender Salaries Substantially Increased. Responding to the Governor's endorsement of the BRG Recommendation on salaries, the 2000 budget of the Kentucky General Assembly provided substantial increases for public defender salaries across Kentucky. That budget includes \$1.2 million for the first year and \$2.6 million for the second year of the biennium to improve the salaries of public defenders statewide at the entry level and throughout the higher classes. The original budget request based upon the salary recommendation of the *Blue Ribbon Group* was for a 30% increase in the salary of each defender. DPA requested 15% increase each year of the biennium. The press widely reported that the General Assembly funded 15% salary raises. Unfortunately that is not the case.

the salary raises will be for defenders in view of the money provided. The starting salary for a public defender will be increased from \$23,388 to \$28,485.60 during the first year of the biennium and will be \$30,593.54 during the second year of the biennium. This allows DPA to pay more reasonable entry level salaries, and should assist in the recruiting and retention of new lawyers. All other defenders have received an 8% increase in salary this year. This will assist in reducing turnover of senior staff.

"Public defenders are some of the hardest working public servants in Kentucky," Erwin W. Lewis, Public Advocate and 23-year public defender veteran said. Lewis observed that, "For far too long, Kentucky defenders have labored under heavy caseloads and the lowest salaries in the nation. This salary increase is far overdue and will go a long way toward enabling our good workers to make a living wage and support their families. By raising these salaries, the Department of Public Advocacy is in a much better position to recruit high quality attorneys, and will be able to retain attorneys longer thereby increasing the quality of the service to the clients and courts of Kentucky. I am very appreciative of Governor Paul Patton, the General Assembly, the *Blue Ribbon Group*, the Public Protection and Regulation Cabinet, and the Personnel Cabinet for making these raises possible."

Prosecutors Still Earn More. The *Blue Ribbon Group's* Recommendation No.4 that "Salary Parity is the Goal" has not yet been achieved. Assistant Commonwealth Attorneys funded by the Unified Prosecutorial System will have starting salaries of \$32,500 for their full-time prosecutors, \$4,000 more than defender starting salaries this year. Full-time Commonwealth Attorneys will earn \$84,722.68 per year. Part-time Commonwealth Attorneys will earn \$50,833.61.

Public Strongly Supports Salary Parity

An overwhelming number of people believe that prosecutors and defenders should receive equal

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pay. Recently, 85% of those polled in the state said that Kentucky prosecutors and Kentucky defenders with the same level of experience should receive the same level of pay for working on the same type of cases. *The Spring 2000 Kentucky Survey* which surveyed 1,070 noninstitutionalized Kentuckians 18 years of age or older from May 18 – June 26, 2000 and was conducted by the University of Kentucky Survey Research Center, asked the following question and had the following answers:

Do you think Kentucky prosecutors and Kentucky public defenders with the same level of experience should receive the same level of pay for working on the same type of cases?

Yes.....906.....84.7%
No.....93.....8.7%
Do not Know.....68.....6.4%
Refused to Answer... 3.....0.3%

The margin of error of the poll is approximately $\pm 3\%$ at the 95 % confidence level. Households were selected using random-digit dialing, a procedure giving every residential telephone line in Kentucky an equal probability of being called.

It makes sense that over 8 in 10 people in Kentucky believe defenders and prosecutors of the same experience doing comparable work should be paid the same because a level playing field is essential for the criminal justice system to do its job with reliability. The recent wave of releases of innocent persons wrongly convicted, including William Gregory in Louisville who in July, 2000 became the first convict in Kentucky and the 74th in the United States and Canada to be released as a result of exoneration by DNA evidence, is all the more reason for public sentiment for equality of pay. The public wants confidence in their criminal justice system. People want fair process and results that are correct. Equal pay for defenders and prosecutors contributes to meeting the public's demands for an equitable system. ♦

Ed Monahan
Deputy Public Advocate

PUBLIC DEFENDER CASELOADS REMAIN A SIGNIFICANT PROBLEM

by Ernie Lewis, Public Advocate

One of the most significant problems that Kentucky public defenders continue to experience is the crush of heavy caseloads. Public defenders in Kentucky averaged 475 new open cases per lawyer in FY 99. Figures for FY00 are not yet available. Commonly accepted national standards establish that defenders should represent no more than 150 felonies, 200 juveniles, or 400 misdemeanors in any given year. Yet, in Kentucky, attorneys operating in Kentucky must carry caseloads averaging far above the national standards.

The 475 average figure does not tell the whole story, however. Some of our attorneys continue to carry caseloads far in excess of even the Kentucky public defender statewide average. In Bowling Green, lawyers are suffering from caseloads projected to be in excess of 750 per lawyer during this past year. In Elizabethtown, lawyers have caseloads projected to be in excess of 580 per lawyer. In FY99, the 5 public defenders in Hazard opened 3900 cases, or 780 per lawyer. Louisville's 52 lawyers opened 31,390 cases, or 603 per lawyer, in FY 99.

The Blue Ribbon Group Called for Lower Caseloads

The Blue Ribbon Group recognized this problem and addressed it in their June 1999 report. Finding #5 of the report read that "[t]he Department of Public Advocacy Per Attorney Caseload Far Exceeds National Caseload Standards."

The Report relied upon several standards from the *ABA Standards Relating to the Administration of Criminal Justice*, Defense Function, Standard 4-1.3(e) (3rd Ed. 1993) states that "Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations...." ABA Providing Defense Services Standard 5-5.3 (a) provides that neither "defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be

given to the workload created by representation in capital cases.”

The Report concluded that “[r]educing caseloads, therefore, is a step which must be taken in order to ensure that defenders in Kentucky have the time and resources available to do their jobs.” Increasing the public defender system funding will enable the DPA to support more attorneys, thus spreading the cases more equitably among the

defenders. The DPA has set target caseloads of 450 open cases per year per attorney in urban areas, and 350 open cases per year per attorney in rural areas.

Blue Ribbon Group Recommendation #6 reads: “Full-time Trial Staff Should Be Increased to Bring Caseloads Per Attorney Closer to the National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.”

The *Blue Ribbon Group* recommended an increase of \$11.7 million each year in the General Fund for DPA. This would have included \$1,902,000 in caseload reduction monies sufficient to hire 35 lawyers.

The Governor’s 2000 budget included \$10 million additional General Fund dollars over the biennium for DPA. This was short of the monies recommended by the *Blue Ribbon Group*. One of the most significant areas left underfunded is in the area of caseload reduction.

The 2000 General Assembly allotted money for 10 new lawyers to be devoted to caseload reduction. Unfortunately, money for these 10 new lawyers will only begin in the spring of 2002. Thus, modest caseload relief will have to wait for 18 more months.

More significantly, 25 lawyers needed to target caseload problems in Kentucky’s public defender system were unfunded for this biennium. This will remain one of my biggest goals in the 2002 General Assembly: full funding of the *Blue Ribbon Group* recommendations in order to reduce caseloads to 450/350 in our full-time offices.

This highlights one of DPA’s primary problems in the legislative process. DPA puts its budget together at the end of one biennium, projecting needs for the next biennium. Sometimes caseloads rise during the next 2 years unexpectedly. Sometimes, new courts are funded, courts with additional caseloads or courts to cover. Sometimes the General Assembly creates new classes

of cases which the public defender must cover. All of this often results in a budget which is inadequate to meet the ever-changing circumstances.

One thing is certain, however. Caseloads are too large at present for Kentucky’s public defenders. A public defender with a caseload that is too large cannot perform her role that Kentucky expects, that is providing an adequate defense to Kentucky’s poor people charged with crimes in order to ensure reliability and fairness are provided. Hopefully, the 2002 General Assembly will fund a solution to this serious problem. ♦

Ernie Lewis
Public Advocate

LEGISLATURE EXPANDS FULL-TIME SYSTEM

by Ernie Lewis, Public Advocate

The Kentucky public defender system began in the early 1970s as an assigned counsel system. Louisville and Boyd County were the two exceptions, born prior to the creation of KRS Chapter 31. In the late 1970s, full-time offices were added in Paducah and Eastern Kentucky. In the early 1980s, the assigned counsel method proved too costly, and the General Assembly established two methods for delivering public defender services, the contract and full-time methods. During the 1980s, additional full-time offices were added, although the great majority of the counties continued to be served by contract counties.

In the early 1990s, the Public Advocacy Commission voted to make one of its primary goals the establishment of a full-time public defender system at the trial level. However, by the time I became Public Advocate in 1996, only 47 counties were being served by full-time offices. This contrasted to the provision of prosecutorial services, particularly in circuit court, where more than 60+ counties were being served by full-time Commonwealth’s Attorneys. Thereafter the trend for even more of the counties to convert over time to full-time prosecutors has continued.

I adopted the provision of public defender services through the full-time method as my primary goal as Public Advocate. I established a goal of having 85% of the caseload being covered by a full-time office by the end of my first term. In 1998, the General As-

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sembly responded by providing funding to open five additional full-time offices during that biennium. By the end of the FY00 fiscal year, 82 counties were being covered from 25 full-time offices. The 85% goal had been achieved.

The Blue Ribbon Group recommended all counties be covered by a full-time office.

The *Blue Ribbon Group* looked at the picture in the spring of 1999. They adopted the goal of the Public Advocacy Commission of having a full-time system at the trial level. The *Blue Ribbon Group* Report published in June of 1999, states in Recommendation #3 that: "The Full-Time System should be completed."

The Report recognized that the full-time system could be expanded to all counties. This would cost \$1,285,800 each year of the biennium. The Report recommended that this sum be part of the \$11.7 million.

The Governor and General Assembly Agreed with the Blue Ribbon Group.

The Governor's budget included \$10 million over the biennium. This budget included \$445,000 in the first year of the biennium, and \$1,239,400 in the second year for additional full-time offices. DPA will be able to move to the threshold of the completion of the full-time system by 2004.

109 counties will be full-time by 2002.

The budget proposed by Governor Patton and funded by the General Assembly allows for 27 additional counties to be converted from contract to full-time during the next biennium.

This budget funds the creation of 2 new offices in Murray and Shepherdsville. These offices were originally scheduled to open in April of 2002. Shepherdsville will stay on the original timetable. The office in Murray will be opening sooner, on an incremental basis, with the completion of the office occurring in 2002. Indeed, the Murray Office has already begun to deliver services to a smaller coverage area. The Murray Office is located at Murray State University, and is presently covering Marshall and Calloway Counties. There is an exciting collaboration occurring between Murray State University and the Murray Public Defender's Office. This collaboration will result in internships being placed throughout Western Kentucky in both other public defender's offices and other parts of the criminal justice system.

Other contract counties will be joined to a nearby full-time office. This will take place in January of 2001. The following counties will be converting:

- Bourbon, Woodford, and Owen Counties will be joining the Frankfort Office.

- Spencer County will join the LaGrange Office.
- Hancock and Ohio Counties will join the Owensboro Office.
- Todd and Logan Counties will join the Hopkinsville Office.
- Butler, Edmonson, Simpson and Allen Counties will join the Bowling Green Office.
- Meade and Breckenridge Counties will be joining the Elizabethtown Office.
- Boyle and Mercer Counties will be joining the Danville Office, which will be moving from Stanford.
- Bath, Menifee, and Greenup Counties will be joining the Morehead Office.
- Lewis County will be joining the Maysville Office.

By the end of the biennium, 109 of Kentucky's 120 counties will be covered from one of 27 field offices.

The private bar will continue to play a significant role.

The full-time method of delivering services does not exclude the private bar. Indeed, private lawyers have been serving as public defenders valiantly over the past 30 years, and will continue to do so. Under this new method, however, their role will shift from primary provider to conflict provider.

It is estimated that as many as 10% of public defender cases involve conflicts of interest. In those instances, a lawyer from the full-time office cannot ethically serve as the lawyer. Private lawyers will be essential as conflict contractors providing services in these cases.

Only 11 counties to go in 2002-2004

By the end of this biennium, 109 counties will be covered by a full-time office. Only 11 counties will remain to complete the goal of a fully-funded full-time system by 2004. The 2002 budget request will include monies for 3 additional offices to cover the remaining counties. The goal of the Public Advocacy Commission, my goal as Public Advocate, and the recommendation of the *Blue Ribbon Group* will have been achieved. The Governor and the General Assembly are to be commended for recognizing that this is good public policy worthy of implementing, and worth funding. ♦

Ernie Lewis
Public Advocate

GENERAL ASSEMBLY FUNDS A STRUCTURALLY BALANCED BUDGET

by Ernie Lewis, Public Advocate

DPA's budget has long been in trouble. For years, DPA's budget was insufficient to pay for defenders to cover the caseload. An additional problem from an administrative point of view was that the budget was chronically insufficient to meet DPA's everyday business needs such as paying for rent, renting copiers, etc. DPA has had for many years a "structurally unbalanced budget."

DPA's budget situation was complicated by what was proposed to be the solution to its problems. In 1994, the General Assembly passed legislation which established a \$40 administrative fee to be paid by each person appointed a public defender. The General Assembly also established a DUI service fee, of which DPA was to receive \$50.

By 1996, DPA's revenue accounts, including the administrative fee, the DUI service fee, and recoupment exceeded \$3 million. The General Assembly allowed DPA to begin to meet its needs by spending down the revenue account. DPA applied these revenues to its most chronic needs, hiring attorneys in the Appellate Branch and in several field offices with the highest caseloads. By 1999-2000, DPA was spending in excess of \$3.9 million in revenue each year to meet these chronic needs. Unfortunately, DPA's revenue from all three sources had leveled off at a little under \$3 million.

The *Blue Ribbon Group* recognized this mounting problem. In its June 1999 Report, the *Blue Ribbon Group* in Finding #9 stated that "without additional General Fund revenues, a deficit will occur in the General Fund account on or before July 1, 2000."

The 2000 budget prepared by Governor Patton and passed by the General Assembly followed the advice of the *Blue Ribbon Group*. First, a current year appropriation was made so that DPA would not run a deficit budget during 1999-2000. This appropriation allowed DPA to make expenditures which had long been delayed on a new phone system, a new copier for the central office, and cars for new investigators.

The appropriation further was added to DPA's baseline budget for 2000-2002. Thus, DPA's budget now includes sufficient monies to pay for rent, travel, phone,

and the other costs of doing business.

Finally, the General Assembly reduced DPA's authority to spend revenue below \$3 million per year. Revenue spending in excess of this amount was moved into General Fund programming. Thus, DPA will be spending no more in revenue than it takes in.

Together, the General Assembly has placed DPA's on a much stronger business foundation. DPA today has a structurally balanced budget. This will allow DPA going into the 2002 General Assembly to be able to truly assess its needs, caseloads, and to ask for a realistic budget. ♦

Ernie Lewis
Public Advocate

LAW CLERKS VITAL TO PUBLIC DEFENDER PROGRAM

by Ernie Lewis, Public Advocate

Law clerks are a vital part of the criminal justice system. Prosecutors, trial judges, appellate judges, all use law students both during the summer and the school year as an important supplement to regular staffing. Law clerks add to the efficiency of any lawyer. Further, hiring a law clerk can be a powerful recruiting tool, introducing them during their formative years to the practice of law in a variety of real-life settings.

Public defender's offices are no exception. Law clerks have long been an important part of the Department of Public Advocacy. Many of our lawyers over the years began as law clerks. I was a law clerk with DPA during the 1976-1977 school year, and as a result, abandoned my dream of being a civil legal services lawyer and replaced it with the dream of being a public defender.

Law clerks have fallen somewhat into disuse in DPA over the past several years. This has occurred due to DPA's budget problems. DPA asked for money for law clerks in the 1998 General Assembly, but did not succeed. Several attempts to receive grant monies for law clerks have similarly failed. The few law clerks that were hired by DPA were funded out of salary monies available due to a staff vacancy.

The 2000 General Assembly has changed that. The

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General Assembly funded DPA with \$50,000 to hire law clerks during 2000-2001. Unfortunately, that appropriation was not repeated for 2001-2002. Hopefully, DPA will be able to continue the law clerk program by finding another source of funding next year.

The law clerk program has already been proven to be quite valuable. Ten law clerks were hired for DPA this summer, serving in the Frankfort Office and in several of the DPA trial offices. These law clerks made our attorneys more efficient. Hopefully, some of these law clerks will become public defenders when they graduate from law school. In any event, they will become better lawyers having had the experience of working with indigent citizens accused of crimes.

DPA hopes that a regularly funded law clerk program will become a part of any future budget appropriation. ♦

Ernie Lewis
Public Advocate

DEFENDER INFRASTRUCTURE FUNDED BY 2000 GENERAL ASSEMBLY by Ernie Lewis, Public Advocate

The Department of Public Advocacy is a statewide “sponsored and controlled” public defender system. KRS 31.010. Of course, DPA’s primary duties involve the direct representation of poor people. DPA’s duties involve a lot more, however. DPA has become a complex organization, with many different responsibilities, including:

- Administering public defender systems in 120 counties.
- Making budget requests to the General Assembly, and accounting for budget expenditures.
- Creating and maintaining information technology services for the public defender system.
- Creating and maintaining criminal law and developmental disability law libraries for the central office and 25 field offices.
- Providing for human resources services to present and potential employees.
- Recruiting for law students at in-state and out-of-state law schools.
- Analyzing and commenting on criminal justice leg-

islation, creative fiscal impact statements for potential legislation.

- Participating in the creation of a unified criminal justice information system.

DPA plays a significant administrative role in the criminal justice system. However, over time, DPA’s chronic underfunding has caused many additional resources to be added to the provision of legal services. As a result, in many ways DPA’s administrative functions have lagged behind. This has caused problems meeting the needs of employees, contractors, courts and others that depend upon these services.

The *Blue Ribbon Group* recognized that DPA’s growth had outflanked its administrative function. Finding #12 reads: “As DPA moves toward a fully staffed statewide program, the demands on the Law Operations Division (LOPS) will grow dramatically. Currently, the number of staff at LOPS will need to be expanded during the implementation of PD21.” *Blue Ribbon Group* Recommendation #12 reads: “The \$11.7 million additional funding for each of the 2 years is reasonable and necessary to meet DPA’s documented funding needs as described in PD 21.” PD 21 included \$512,600 annually to build DPA’s administrative structure.

The 2000 General Assembly has funded the Governor’s budget, which includes a significant portion of that recommended by the *Blue Ribbon Group*. While not all needs identified by the BRG were recognized, the General Assembly has enabled the Law Operations Division to build a solid infrastructure. A librarian will be added soon to the one librarian presently employed by DPA, enabling DPA to protect and enhance its investment in library services. An accountant will be added to the two accountants presently on staff, enabling DPA to better monitor its expenditures. An information technology person will be hired enabling DPA to serve all of its technology customers on a regional basis. Finally, a clerk will also be added.

DPA has an obligation to be well managed and efficient in order to spend public dollars in the most reasonable manner possible. The 2000 General Assembly has enabled DPA to meet these obligations during the next biennium. ♦

Ernie Lewis
Public Advocate

Commonwealth's Public Advocate Named Kentucky's Outstanding Lawyer by Kentucky Bar Association

Erwin (Ernie) W. Lewis was honored June 15, 2000 as the **2000 Outstanding Lawyer** by the Kentucky Bar Association. The Kentucky Bar Association, an agency of the Supreme Court of Kentucky, is the unified professional and regulatory association governing the practice of law in Kentucky. The ceremony took place in Covington at the KBA Annual Membership Awards Luncheon, in conjunction with the KBA Annual Convention.

Ernie was appointed in October 1996 to a 4-year term by Kentucky's Governor Paul Patton as the 5th Public Advocate of the Commonwealth of Kentucky. He leads a statewide public defender program, which represents 100,000 clients yearly.

Since joining the Department of Public Advocacy in 1977, Lewis' public defender work includes a broad range of experiences and responsibilities including work as a trial attorney, an appellate attorney, a capital trial, appeals and post-conviction attorney, as a manager of a local public defender office, manager of all the trial offices in Kentucky and now as Kentucky's Public Advocate.

According to Deputy Public Advocate and long-time friend, Ed Monahan, who nominated Lewis for the award, "As a public defender for 23 years, and as a person committed to helping those in need for 27 years, Ernie distinguishes himself as a person who has stood up and made more evident the humanity of individuals in need in an effort to enhance their dignity and their lives."

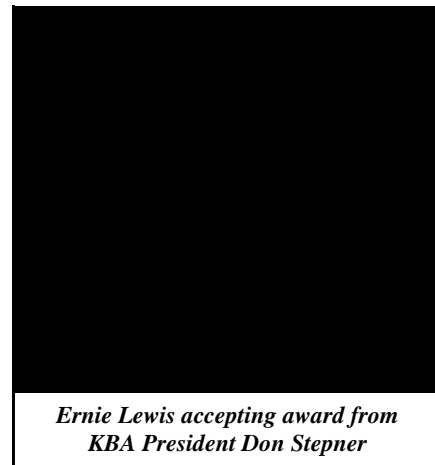
Lewis stated, "This is an honor for me personally and for all Kentucky public defenders who work so hard every day to bring justice to 100,000 poor Kentuckians every year. I especially thank the Kentucky Bar Association for holding up public defenders, the *Blue Ribbon Group* for their outstanding work to improve indigent defense in Kentucky, all Kentucky public defenders, and my dear family."

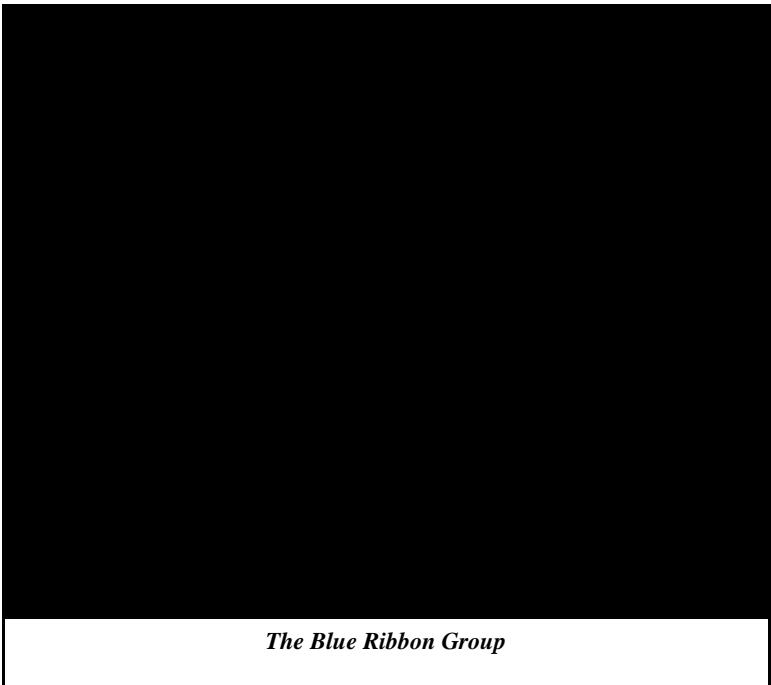
In 1986, Lewis co-founded the statewide Kentucky Association of Criminal Defense Lawyers (KACDL). He has been a Board Member since KACDL's inception. He was a major force for change in the way jurors are selected in this state to ensure a more inclusive selection process through his proposed change to the Kentucky Supreme Court Rules. During his tenure, Ernie has served on the Governor's

Criminal Justice Response Team, Juvenile Justice Advisory Board, Appalachian Research and Defense Fund Board, the Governor's Domestic Violence Board, and the recently created statewide Kentucky Criminal Justice Council. As Public Advocate, Ernie has obtained a substantial increase funding for DPA and worked successfully to represent defender interests on substantive criminal legislation, including his work with a broad coalition for passage of the nation's first Racial Justice Act. He created and led *The Blue Ribbon Group on Improving Indigent Defense in the 21st Century*, a 22 member group of distinguished members of the KBA, the Judiciary, General Assembly, prosecution, key members of the Kentucky justice community and the Public Advocacy Commission, which was chaired by Justice Secretary Robert Stephens and Michael Bowling. This group proposed to the Governor 12 Recommendations to insure a quality defender program in the 21st Century. These recommendations resulted in \$10 million additional dollars for the biennium being placed in DPA's budget by Governor Patton and the 2000 General Assembly.

He has designated the Appalachian Research & Defense Fund headed by John Rosenberg to be the recipient of the \$1,000 award made in his name by the Kentucky Bar Foundation.

The award ceremony took place during the KBA Annual Convention's Membership Luncheon at the Northern Kentucky Convention Center in Covington. ♦



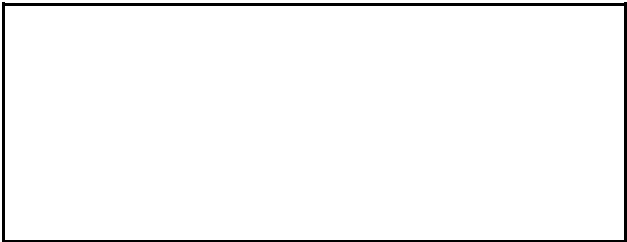


The Blue Ribbon Group

Legislative Update

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